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IN THE
Supreme Court of the United States
OCTOBER TERM, 1963

No. 292

MISSOURI PACIFIC RAILROAD COMPANY,
Petitioner,

v.

ELMORE & STAHL,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court
of the State of Texas.

BRIEF
OF THE PENNSYLVANIA RAILROAD COMPANY
AS AMICUS CURIAE

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Dated: , 1963

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**BRIEF OF THE PENNSYLVANIA RAILROAD
COMPANY AS AMICUS CURIAE.**

Amicus curiae, The Pennsylvania Railroad Company, respectfully urges that a writ of certiorari be granted in the present case. Counsel for both parties have consented to the filing of this brief of amicus curiae.

1. The interest of amicus curiae in the present case arises from the fact that it is a connecting carrier with Petitioner and with other carriers to whom perishable agricultural commodities are delivered for shipment in interstate commerce. An action for damages to property

allegedly caused by a carrier while the goods are in transit may be brought against the originating carrier or any connecting carrier (49 U.S.C. § 20(11)). Under freight claim rules and regulations which govern the allocation of liability among carriers, amicus curiae may be required, in circumstances similar to those presented by the instant case, to bear a portion of any judgment entered against the originating carrier and to share in the costs of litigation. During the five year period 1958-1962, amicus curiae paid a total of \$6,005,924 in satisfaction of claims for carload loss and damage to fresh fruits, melons, and vegetables, and frozen fruits and vegetables. In 1962, the sum paid in connection with such claims was \$1,049,821. Amicus curiae thus has a direct interest in the law governing the liability of carriers for spoilage and decay to perishable goods.

2. The instant case presents a question of substantial public importance: Is a railroad common carrier under the Uniform Straight Bill of Lading liable for spoilage and decay to perishable commodities notwithstanding a jury finding of due care on the part of the carrier? The ruling of the court below holding the carrier liable despite a jury determination that it was not negligent, appears to be in direct conflict with a decision by the Court of Appeals for the Ninth Circuit in *Larry's Sandwiches Inc. v. Pacific Elec. R.R.*, No. 18,265, June 3, 1963, and a decision by the Court of Appeals for the Fifth Circuit in *Trautmann Bros. Co. v. Missouri Pacific R.R.*, 312 F.2d 102 (1962). The lower court's ruling is likewise contrary to the weight of authority on this point. See e.g., *Southern Pac. Co. v. Itule*, 51 Ariz. 25, 74 P.2d 38 (1937); *Atlantic Coast Line R.R. v. Georgia Packing Co.*, 164 F.2d 1 (5th Cir. 1947).

3. Amicus curiae respectfully submits that it should be made clear by this court that in a case involving spoilage and decay of perishable commodities transported in

interstate commerce, a complete defense under the federal common law is established by jury findings that all transportation services covered by the Bill of Lading were performed without negligence and in conformity with the shipper's instructions, and that all matters not covered by the Bill or the shipper's instructions were likewise prudently performed.

Respectfully submitted,

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